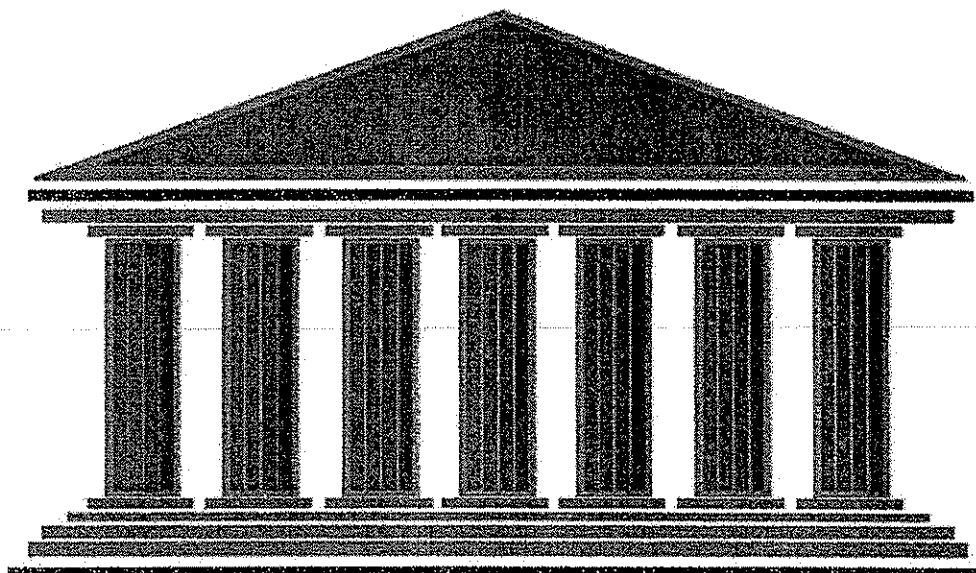


# EXHIBIT A



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# **GOVERNOR'S BILL JACKET**

## **1975 CHAPTER 659**

### **MEDICAID REIMBURSEMENT**

**35 PAGES**

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1975

SENATE

JUN 18 1975

PAGE 70

Date

JUN 18 1975

PAGE

The Senate Bill

by Mr. W. SMITH

Entitled: "

Senate No. 6553-A

Assem. Rept. No. \_\_\_\_\_

6553-A

MR. W.T. SMITH, ETC.  
AN ACT TO AMEND THE SOCIAL SERVICES LAW, IN  
RELATION TO INTEREST AND PENALTIES FOR  
FALSE STATEMENTS OR MISREPRESENTATIONS IN  
CONNECTION WITH MEDICAID REIMBURSEMENT

" was read the third time

DEBATE WAS HAD THEREON:

The President put the question whether the Senate would agree to the final passage of said bill, the same having been printed and upon the desks of the members in its final form at least three calendar legislative days, and it was decided in the affirmative, a majority of all the Senators elected voting in favor thereof and three-fifths being present, as follows:

AYE	Dist.		NAY	AYE	Dist.		NAY
	47	Mr. Anderson			22	Mr. Lewis	
	49	Mr. Auer			50	Mr. Lombardi	
	45	Mr. Barclay			24	Mr. Marchi	
	23	Mr. Beatty			5	Mr. Marino	
	25	Ms. Bellamy			48	Mr. Mason	
	33	Mr. Bernstein			28	Mr. McCall	
	19	Mr. Bloom			59	Mr. McFarland	
	12	Mr. Bronston			16	Mr. Meyerson	
	9	Ms. Burstein			14	Mr. Moore	
	7	Mr. Caemmerer			42	Mr. Nolan	
	34	Mr. Calandra			27	Mr. Ohrenstein	
	21	Mr. Conklin			17	Mr. Owens	
	46	Mr. Donovan			11	Mr. Padavan	EXCUSED
	6	Mr. Dunne			60	Mr. Paterson	
	54	Mr. Eckert			53	Mr. Perry	
	35	Mr. Flynn			36	Mr. Pisani	
	32	Mr. Galiber			57	Mr. Present	
	30	Mr. Garcia			39	Mr. Rolison	
	1	Mr. Giuffreda			31	Mr. Ruiz	
	13	Mr. Gold			10	Mr. Santucci	
	26	Mr. Goodman			40	Mr. Schermerhorn	
	37	Mr. Gordon			2	Mr. Smith, B. C.	
	56	Mr. Griffin			51	Mr. Smith, W. T.	
	20	Mr. Halperin			43	Mr. Stafford	
	41	Mr. Hudson			18	Mr. Straub	
	44	Mr. Isabelle			55	Mr. Tauriello	
	4	Mr. Johnson			3	Mr. Trunzo	
	15	Mr. Knorr			58	Mr. Volker	
	29	Mr. Leichter			52	Mr. Warder	
	8	Mr. Levy			38	Ms. Winikow	

AYES 59NAYS 0

Ordered, that the Secretary deliver said bill to the Assembly and request its concurrence therein.

*W. Smith*  
*6553-A, Rec. No. 833* *7/10*  
**1975**

(Republicans in Italics)

Those Who Voted  
In the AffirmativeThose Who Voted  
In the NegativeThose Who Voted  
In the AffirmativeThose Who Voted  
In the NegativeThose Who Voted  
In the AffirmativeThose Who Voted  
In the Negative

Mr. Abramson  
 Miss Amatucci  
 Mr. Barbaro  
*Mr. Betros*  
 Mr. Bianchi  
 Mr. Blumenthal  
 Mr. Brewer  
 Mr. Brown  
*Mr. Burns*  
 Mr. Burroses  
*Mr. Calogero*  
*Mr. Caputo*  
 Mr. Cincotta  
*Mr. Cochran*  
 Mrs. Connelly  
 Mr. Connor  
*Mr. Cook (C. D.)*  
*Mr. Cook (D. W.)*  
 Mr. Cooperman  
 Mr. Culhane  
*Mr. Daly*  
*Mr. D'Amato*  
*Mr. D'Andrea*  
 Mr. Dearie  
*Mr. DelliBovi*  
 Mr. Del Toro  
 Mr. DeSalvio  
*Mr. DiCarlo*  
 Mr. DiFaleo  
 Mrs. Diggs  
*Mr. Dokuchitz*  
*Mr. Duryea*  
*Mr. Dwyer*  
*Mr. Emery*  
*Mr. Esposito*  
 Mr. Eve  
 Mr. Farrell  
 Mr. Ferris  
*Mr. Field*  
 Mr. Fink  
*Mr. Flack*  
*Mr. Flanagan*  
 Mr. Fortune  
 Mr. Fremming  
 Mr. Frey  
 Mr. Gazzara  
~~Mr. Gerski~~  
 Mr. Gerski  
 Mr. Gottfried  
 Mr. Graher

Mr. Grannis  
 Mr. Greco  
 Mr. Griffin  
 Mr. Griffith  
*Miss Gunnang*  
 Mr. Haley  
 Mr. Hamilton  
~~Mr. Harenberg~~  
 Mr. Harenberg  
*Mr. Harris*  
*Mr. Hawley*  
*Mr. Healey*  
 Mr. Hecht  
*Mr. Henderson*  
*Mr. Herbst*  
 Mr. Hevesi  
 Mr. Hinchey  
 Mr. Hochberg  
 Mr. Hochbrueckner  
 Mr. Hoyt  
*Mr. Hurley*  
 Mr. Izard  
*Mr. Jonas*  
*Mr. Kelleher*  
 Mr. Kidder  
 Mr. Koppell  
 Mr. Kremer  
 Mr. Landes  
*Mr. Lane*  
 Mr. Lasher  
*Mr. Lee*  
 Mr. Lehner  
 Mr. Lentol  
*Mr. Levy*  
 Mr. Lewis  
 Mr. Lill  
 Mr. Lisa  
*Mr. Lopresto*  
*Mr. Mannix*  
 Mr. Marchiselli  
*Mr. Margiotta*  
*Mr. Marshall*  
 Mr. McCabe  
*Mr. Mcga*  
 Mr. MiBer (G. W.)  
 Mr. Miller (H. I.)  
*Mr. Miller (H. M.)*  
*Mr. Miller (M. H.)*  
 Mr. Mirto  
 Mrs. Melinari

Mr. Montana  
*Mr. Murphy (G. A.)*  
*Mr. Murphy (M. J.)*  
*Mr. Murphy (T. J.)*  
 Mr. Nicolosi  
 Mr. Nine  
*Mr. O'Neil*  
 Mr. Orazio  
 Mr. Passannante  
~~Mr. Pecos~~  
 Mr. Posner (H. A.)  
 Mr. Posner (S.)  
*Mr. Rappleyea*  
*Mr. Reilly*  
*Mr. Riford*  
 Mr. Robach  
*Mr. Roosa*  
*Mr. Ross*  
 Mrs. Runyon  
 Mr. Ryan  
 Mr. Schmidt  
 Mr. Schumer  
*Mr. Sears*  
 Mr. Serrano  
 Mr. Sharoff  
 Mr. Siegel  
 Mr. Silverman  
*Mr. Solomon*  
 Mr. Stavisky  
 Mr. Stein  
*Mr. Stephens*  
 Mr. Stott  
 Mr. Strelzin  
*Mr. Suchin*  
*Mr. Sullivan*  
 Mr. Tallon  
*Mr. Taylor*  
 Mr. Thorp  
 Mr. Tills  
 Mr. Vann  
*Mr. Veille*  
 Mr. Virgilio  
 Mr. Walsh  
*Mr. Wemple*  
 Mr. Weprin  
~~Mr. White~~  
 Mr. Yevoni  
 Mr. Zagane  
 Mr. Zimmer  
~~Mr. Zimmer~~

Mr. Hanna present but  
 not voting.

AYES

NOES



STATE OF NEW YORK  
EXECUTIVE CHAMBER  
ALBANY 12224

MEMORANDUM filed with the following bills:

Senate Bill Number 1074-C, entitled:

APPROVAL # 44  
CHAPTER # 648  
"AN ACT to amend the public health law, in relation to the rights of patients in certain medical facilities"

Assembly Bill Number 8815, entitled:

APPROVAL # 45  
CHAPTER # 649  
"AN ACT to amend the public health law, in relation to enacting criteria for the regulation of nursing homes and facilities providing health-related service"

Assembly Bill Number 8816, entitled:

46  
650  
"AN ACT to amend the public health law, in relation to enacting revised criteria for the regulation of residential health care facilities"

~~Senate Bill Number 6466-A, entitled:~~

~~"AN ACT to amend the social services law, in relation to transfers of the care and custody of children"~~

Senate Bill Number 6541-C, entitled:

APPROVAL # 47  
651  
"AN ACT to amend the public health law, in relation to liability of controlling persons of nursing homes and facilities providing health-related services or the operators thereof"

Senate Bill Number 6542-B, entitled:

APPROVAL # 48  
CHAPTER # 652  
"AN ACT to amend the public health law, in relation to reports of nursing homes and facilities providing health-related services"

Senate Bill Number 6543-A, entitled:

49  
653  
"AN ACT to amend the public health law, in relation to providing for unannounced inspections of nursing homes and to providing administrative penalties for unauthorized advance notice of such inspections"

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A P P R O V E D

When I took office in January of this year, the public's confidence in the State's ability to protect its most defenseless citizens, the aged and infirm, had been destroyed by a series of dramatic disclosures highlighting the abuses of nursing home care in this State.

One of my first acts was the creation of a Moreland Act Commission, headed by Morris B. Abram, to investigate the regulation of all residential care facilities in the State receiving any public funding.

Mr. Abram immediately assembled a talented staff to investigate the existing governmental system of regulation and to determine where that system failed to provide those charged with responsibility for residential health care with the necessary tools to carry out their responsibilities, as well as where that system was vulnerable to misuse and influence peddling.

Ten of the bills I am signing today are products of the Moreland Commission's work. Two other bills, Assembly 8815 and Assembly 8816, complement these Moreland bills and address themselves as well to certain problems, including Medicaid rate setting, on an interim, emergency basis, to protect the public purse while these problems receive further study by the Moreland Commission during the coming months.

Another bill, Senate 1047-C, enacts a forceful bill of rights for patients in nursing homes which will guarantee them the dignity and privacy that is their due.

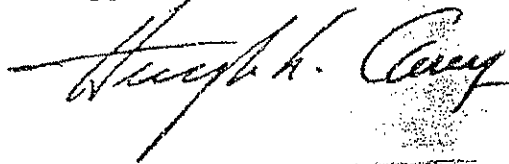
These bills together cover every aspect of the regulation of residential health care facilities--from financial disclosure by operators and owners to the creation of a patient's right of action against a facility which fails to meet required standards of care. To curb abuses in the Medicaid program, they provide for the triple recovery by local districts of fraudulently obtained funds, for the exclusion of certain non-care related costs (such as legal fees) from Medicaid rates and for the stringent regulation of real estate cost claims. In the area of patient care, they would give each patient the potential to act as his own ombudsman, and would provide for his access to full information about his facility. In order to strengthen governmental regulation, they would provide for required inspections and a rating system, to be promulgated by the Commissioner of Health. By this legislation, the Commissioner is also given important new powers to impose penalties and close facilities or limit their operation to protect patients' health or safety.

Each of these bills has been endorsed by the Moreland Commission and the Departments of Health and Social Services.

-4-

By doing much of what had to be done to strengthen the regulation of residential health care facilities and by providing their patients with basic rights, as well as the right to have their grievances redressed, this legislation is highly responsive to the needs of this group of citizens. I commend the Moreland Commission and the sponsors of these bills for their work, which goes far in assuring that elderly and disabled New Yorkers who must look to nursing homes when they can no longer take care of themselves can find there the quality of care they seek and deserve.

The bills are approved.

A handwritten signature in dark ink, reading "Hugh H. Carey". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

B-20  
SENATE

No. 6553-A

Law: Social Services

## BUDGET REPORT ON BILLS

Introduced by:

Smith, Lombardi, Flynn

Sections: §145-b (new)

Session Year: 1975

ASSEMBLY

No.

Division of the Budget recommendation on the above bill:

Approve: \_\_\_\_\_ Veto: \_\_\_\_\_ No Objection: X No Recommendation: \_\_\_\_\_

1. Subject and Purpose: This bill provides for financial penalties in cases of fraud or misrepresentations relating to reimbursement to any person or business for services or supplies provided to Medicaid recipients.

2. Summary of Provisions: Existing statute provides for criminal penalties of up to four years imprisonment and for fines up to double the profit from the crime for persons who defraud the Medicaid program.

Effective September 1, 1975, this bill would:

- a. Provide authority for the State or local social services district to sue Medicaid providers who defraud the State for damages equal to three times the amount of overstatement in addition to any other penalties provided by law.
- b. Provide for the apportionment of collected judgments between the local social services district and the State according to Department of Social Services regulation.
- c. Require Medicaid providers to pay interest on overpayments at the maximum rate in effect at the time of overpayment.

3. Prior Legislative History: In the current legislative session, three bills (A. 6296-A, A. 3407, S. 2714), similar to the instant bill, would have provided for treble damages in the instance of overclaiming by service providers. All bills died in committee. A fourth bill (A. 6297-A) that would have required nursing home financial reports to be certified by a CPA, with intentional falsification classified as a Class E Felony, also died in committee.

Two 1975 Department of Health Proposals (HD #35 and #36), would have amended the Public Health Law making it a misdemeanor to falsify any information required under Article 28 of that law, and would have required medical facilities to repay Medicaid overpayments with interest, respectively.

Bills similar to the subject bill (S. 4136-A and A. 3989), introduced in the 1974 and 1973 legislative sessions which would have amended the Social Services Law to provide for treble damages in the instance of public assistance service providers who receive overpayment through fraudulent claims, died in committee.

Date: \_\_\_\_\_ Examiner: \_\_\_\_\_

Disposition:

Chapter No.

Veto No.

- 2 -

4. Arguments in Support:

- a. This bill, with its stiff financial deterrents, is a reaction to recent disclosures of fraud in connection with Medicaid over-reimbursement and could serve to underscore the State's commitment to the reduction of Medicaid costs.
- b. According to the Departments of Health and Social Services, existing statutes providing criminal penalties for service provider overclaiming have not been completely effective. This bill would supplement current criminal statutes by providing heavy financial penalties for offenders. The existence of stronger deterrents could reduce the incidence of overclaiming by service providers.
- c. This bill should enable the State to increase the amount of recoupments from Medicaid overpayments.

5. Possible Objections:

- a. It could be argued that the financial penalties imposed by this bill could prove ineffective because of the difficulty in proving fraud on the part of the service provider. This has been the case under the current criminal statutes. However, according to the Department of Health, proof of fraud is less difficult in civil cases.
  - b. This bill gives the State or local social services district the authority to sue Medicaid providers for damages equal to three times the amount of any figure overstated. Hospitals and nursing homes are required to submit to the Department of Health statements of total operating costs from which Medicaid rates are determined. This bill could possibly be interpreted to allow providers to be sued triple the amount of overstatement of total operating costs, which could be significantly greater than the actual Medicaid component overstatement. This could be a draconian penalty for some Medicaid providers, especially hospitals since, according to the Health Department, Medicaid comprises one-third of patient costs for hospitals while in nursing homes it comprises almost one hundred percent of the patient costs.
  - c. This bill implies that Medicaid providers must refund overpayments and pay interest on such overpayments in one lump sum. This would alter current practice which allows for flexibility in scheduling of repayments. Payment in one lump sum could also be a severe hardship on some penalized Medicaid providers.
6. Other State Agencies Interested: The Departments of Social Services and Health support this bill. The Department of Law has an interest in this bill but has not yet developed its position.

- 3 -

7. Known Position of Others: None known. Local social services districts and associations of health care facilities should have an interest.
8. Budgetary Implications: The Department of Health is unable to estimate potential State savings from money recouped from overpayments to service providers. However, if savings amounted to one-half of one percent in the State's Medicaid program, they would total \$136 million annually.
9. Recommendation: This bill provides for financial penalties in cases of fraud or misrepresentation relating to reimbursement to any person or business for services or supplies provided to Medicaid recipients. Although the bill is imprecise regarding the exact basis for setting penalties, we have no serious objections to enactment.

Examiner: John Dalton  
Date: July 25, 1975

Vincent E. LaFleche  
Assistant Chief Budget Examiner  
(Management)

JUL 22 1975

AL

Multiple memorandum received from the  
State Comptroller dated \_\_\_\_\_  
stating the following bill is of  
"No Interest" to the Department of  
Audit and Control.

Intro. No.

Print No.

The original memorandum filed with:

C 659

GOVERNOR'S PROGRAM BILL (At the request of  
the Moreland Act  
Commission)

S-6553

W. Smith  
1975

A-7820

HAVES/  
MEMORANDUM

JUL 16 1975

RE: AN ACT to amend the social services law, in relation to interest and penalties for false statements or misrepresentations in connection with medicaid reimbursement.

Purpose of the Bill:

To create a right on behalf of the State to sue for damages in cases of fraud or misrepresentations in connection with medicaid reimbursement.

Summary of Provisions of the Bill:

A new section 145-b would be added to the Social Services Law. Subdivision 1 makes unlawful any false statements or the concealment of any material fact in an attempt to obtain or in the actual obtaining of payment for services from medicaid funds. Subdivision 2 gives the Attorney General a right to bring a treble damage action for any violation of subdivision 1. Subdivision 3 provides that medicaid providers who overcharge will have to pay interest at the maximum legal rate in addition to making restitution.

Statement in Support of the Bill:

This bill will provide a significant financial deterrent to the practice of overstating or falsely stating figures in cost or rate setting forms used for Medicaid reimbursement and to the practice of overstating or falsely stating claims for services rendered, either by nursing homes, hospitals, physicians or other Medicaid providers.

This bill provides a necessary complement to a whole range of existing criminal statutes, which can and should be used in these circumstances. For instance, New York Penal Law § 210.45 (McKinney 1967) states that the making of a false written statement on an instrument which declares that such statements are punishable is a class A misdemeanor which is punishable by up to one year imprisonment. Some statutes proscribe the falsification of business records. Id. at §175.00 et. seq. The offering of an instrument to a public official to become part of his official records is a

- 2 -

class A misdemeanor if one knows that it contains false statements. Id. at §175.30. If such action is taken with the intent of defrauding the State, it is a class E felony, punishable by up to four years imprisonment. Id. at §175.35.

To supplement these criminal offenses with a strong financial deterrent in the form of treble damages is a necessary step in regulating abuse in the Medicaid field. Traditionally, treble damage statutes are drafted to create a private right of action for an injured party to recover three times the amount of his actual damages. However, we have found no legal barrier to creating the same right of action for the State. Particularly in this matter of great public concern the State should be in the position to create a significant financial, as well as criminal, deterrent.

Without a treble or multiple damage statute the State would be limited to recovery of actual damages plus interest. Even if the State requested multiple damages, the case law indicates that in the absence of specific statutory authority, the courts would not permit recovery by the State of more than its actual damages. It is clear that such a remedy has had no deterrent effect to date and that a more effective financial deterrent is necessary in a system where the profit motive is so strong.

Budgetary Implications:

None.

S-6553-a

MEMORANDUM ACCOMPANYING COMMENTS ON BILLS BEFORE  
THE GOVERNOR FOR EXECUTIVE ACTION

AUG 1 1975

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES

July 31, 1975

SENATE  
Int. 6553-A

Introduced by: Senator W. T. Smith

RECOMMENDATION: Approval

STATUTES INVOLVED: Social Services Law, Section 145-b

EFFECTIVE DATE: September 1, 1975

DISCUSSION:

1. Purpose of bill: This bill would authorize the imposition of treble damages against any person, firm or corporation who fraudulently obtains or attempts to obtain public funds for services or supplies under the medical assistance program; either the State or local social services district could sue to recover such damages, which, once collected, would be apportioned between the State and local social services districts; would further provide that where a provider or supplier of services under the program of medical assistance is required to repay any payment received under such program, repayment shall bear the maximum legal rate of interest from the date the payment was initially made to such provider.
2. Summary of provisions of bill: A new section 145-b would be added to the Social Services Law to accomplish the above-stated purpose.
3. Prior legislative history of bill & similar proposals: Two similar bills (A.3989 and S.4136) were introduced during the 1975 legislative session, but neither bill was reported out of the Senate or Assembly Social Services Committees.
4. Known position of others respecting bill: None known
5. Budget implications: This bill should result in some reduction in Medicaid expenditures by discouraging the filing of fraudulent or unsubstantiated Medicaid claims.
6. Arguments in support of bill: The Department of Social Services supports the intent of this bill in strengthening the enforcement provisions of the Social Services Law with regard to fraudulent conduct by providers of services and supplies under the medical assistance program.

Local social services districts currently take administrative and legal action to recover funds which have been paid out as a result of fraud, but inadequate staffing and legal barriers are major impediments to an aggressive program. In addition, current law encourages Medicaid providers to file

Thirty Day Bill  
S.6553-A

-2-

insubstantiated claims if the claims are disallowed, the providers can simply pay the funds back without any interest or penalty.

The Department of Health, Education and Welfare is placing major program emphasis on identifying cases of fraud and abuse, and has indicated its intention of requiring the State to adopt a separate program to deal with this issue. Such a program requires the establishment of procedures for detecting fraud, including verifying that recipients have actually received medical care or services for which the provider submitted bills, investigating suspected fraud, referring such cases to law enforcement officials where appropriate, and reporting the total numbers of such cases to the Department of Health, Education and Welfare.

The ultimate success of this bill as a deterrent to fraud in the medical assistance program will depend upon the extent to which the Courts are willing to render full judgments in such cases, and the extent to which additional State and local staffing is made available to detect fraud or overpayment cases and to bring those cases to court.

7. Arguments in opposition to bill: None
8. Reasons for recommendation: See #6 above.

S-6553-A

AL



AUG 5 1975

STATE OF NEW YORK  
DEPARTMENT OF LAW  
ALBANY 12224

LOUIS J. LEFKOWITZ  
ATTORNEY GENERAL

MEMORANDUM FOR THE GOVERNOR

Re: Senate 6553-A

This bill, effective September 1, 1975, would amend the Social Services Law, by adding thereto Section 145-b, which confers upon the state or local social services districts the right to commence an action to recover damages equal to three times the amount of any Medicaid reimbursement amount which is overstated by a Medicaid provider. Any amounts collected, under the terms of this bill, would be apportioned between the state and the local social services district.

A similar bill was introduced in 1973 and 1974 (Senate 4136, Assembly 3989), as a two-year bill. However, this bill failed to pass in either year.

I find no legal objection to this bill.

Dated: August 5, 1975

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Louis J. Lefkowitz".

LOUIS J. LEFKOWITZ  
Attorney General



ART P. WHALEN, M.D.  
COMMISSIONER

STATE OF NEW YORK  
DEPARTMENT OF HEALTH

TOWER BUILDING  
EMPIRE STATE PLAZA  
ALBANY, NEW YORK 12237

July 24, 1975

OFFICE OF THE COUNSEL

DONALD A. MAC HARG  
COUNSEL

AMBROSE P. DONOVAN, JR.  
CHIEF ASSOCIATE COUNSEL

JUL 24 1975

Hon. Judah Gribetz  
Counsel to the Governor  
Executive Chamber  
State Capitol  
Albany, New York

*MAJ*  
Re: Senate 6553-A

Dear Mr. Gribetz:

This bill, originally introduced at the request of the Moreland Act Commission, authorizes local social services districts or the State of New York to bring civil actions for treble damages against any provider or supplier of services or supplies who knowingly obtains or attempts to obtain payment from public funds by false statements or representations, deliberate concealment of material facts or other fraudulent schemes or devices. In the case of medical assistance, interest at the maximum legal rate will be due on all overpayments until repaid.

The purpose of this bill is to prevent excess or fraudulent billing in the social services field and particularly the Medicaid program.

The Department of Health recommends approval of the bill, the need for which has become evident as a result of the experience of the Department and public investigations.

Sincerely,

*Donald A. MacHarg*

DONALD A. MacHARG  
Counsel

JUL 28 1975

AL

William F. Searles  
Chairman

R. Palmer Hare Jr.  
President

Jerry Bussell

Mrs. Robert Beckerman  
J. Bruce Kennedy  
Robert L. Pappas  
Mrs. Wm F. Robinson  
William K. Pratt  
Wesley Robinson

Louise C. Turner Jr.  
Executive

Robert T. Longley  
Secretary

Henry Richardson Jr.  
Executive Director

Miss Laura Phillips Austin  
Executive Vice President

Marjorie E. Hunt  
Administrative Vice President

Franklin F. Rathbone  
Associates Vice President

Re: S.6541C, S.6542B, S.6543A,  
S.6544B, S.6545A, S.6546B,  
S.6553A, S.6554B

[illegible]

The Federation of Protestant Welfare Agencies supports all of the above-captioned bills, the bills of the Moreland Act Commission on Nursing Homes, and urges that the Governor sign them into law.

The widespread abuse by owners and operators of nursing homes which was discovered by the Commission deserves strong measures of reform in this vital and needed segment of the social service field. The most pervasive problem presented by the Commission appeared to be the fact that most of the operations and procedures could degenerate to such low quality levels by reason of the shroud of secrecy surrounding the industry. In our opinion, the most beneficial aspect of the package of bills will be the opening up of nursing home operations to public scrutiny and appropriate government regulation. When adequately funded, staffed and motivated, the government agencies will be able to oversee ownership and beneficial ownership, all monetary and business interests, day-to-day operations through unannounced inspections, and certified financial reports. In addition, the residents and their relatives will have posted reports of the inspection reports and remedial actions taken by operators, new certificates will depend on criteria of past performances, there can be stiffer penalties for continuing violations, and operators abusing the benefits of Medicaid will suffer treble damages.

The additional measure (the establishment of controlling persons), although we opposed it in its original form, has now been rewritten and amended in such a way that we support it also. This measure, amended to exclude those whose sole function is director or trustee, will protect voluntary directors of non-profit agencies while still placing heavy liability on those whose daily actions are responsible for the welfare of

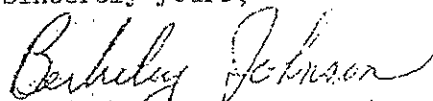
[illegible]

-2-

patients/residents. It is those who are directly responsible for the expense and receipt of money, the care of patients, and the maintenance of the facility who should be held accountable for abuse in these areas.

The enactment of this package of bills should serve to be an excellent means of curbing nursing home abuse, adequately overseeing the welfare of the resident elderly, and re-establishing a high standard of care in residential facilities. For these reasons, the Federation urges that the Governor sign these bills into law.

Sincerely yours,

A handwritten signature in cursive script, reading "Berkeley Johnson".

Berkeley D. Johnson, Jr.

Chairman

Committee on Public Social Policy

7 E V

S-6553-A

# AMERICAN JEWISH CONGRESS

STEPHEN WISE CONGRESS HOUSE · 15 EAST 84TH STREET · NEW YORK, N.Y. 10028 · TRAFALGAR 9-4500

July 30, 1975

Honorable Judah Gribetz  
Counsel to the Governor  
Executive Chamber  
State Capitol  
Albany, New York 12224

AUG 1 1975

RE: S. 269-A, S. 1074-C/A. 993-C., S. 6541-C, S. 6542-B, S. 6543-A,  
S. 6544-B, S. 6545-A, S. 6546-B, S. 6547-A, S. 6551-B, S. 6553-A,  
S. 6554-B and S. 6942/A. 8815

Dear Mr. Gribetz:

As an organization that has been heavily involved in local and national efforts aimed at nursing home reform, the American Jewish Congress welcomes your request for our comments and recommendations on these thirteen bills affecting the operations of nursing homes in New York State.

We recommend that the Governor veto S. 269-A that would provide for the appointment of nursing home advocates in each of the state's counties. We urge that the Governor sign the remaining twelve bills, although we believe that several of them are in need of improvement.

S. 269-A would charge the Commissioner of Health with appointing one person in each county to serve as "a nursing home patient advocate."

We have long believed that an independent nursing home ombudsman with statutory authority and funds to operate effectively would help significantly in reducing abuses in the nursing home industry and would ultimately lead to a higher quality of care for all patients. However, S. 269-A is so minimal as to be virtually meaningless. While the ostensible intention is that the advocates will investigate specific complaints, the bill does not include any powers that would make possible meaningful investigation. Indeed, the law specifically denies that the "advocates" findings shall be granted any "legal presumption." The office of "advocate" has no subpoena powers, no staff and no funding. Perhaps even more serious, signing of S. 269-A will give the public the false impression that a genuine nursing home ombudsman system is at work.

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MORRIS MICHELEON, Boston

Honorable Judah Gribetz

- 2 -

July 30, 1975

S. 269-A can accomplish no worthwhile improvements in patient care and we recommend that it be vetoed.

The remaining twelve bills are first steps in urgently needed nursing home reform and, we trust, indicative of additional forthcoming improvements. We endorse S. 6543-A (requiring unannounced inspections); S. 6544-B (making nursing home financial and inspection reports available to the public); S. 6545-A (mandating certification of financial reports); S. 6546-B (compelling high levels of character and competence from proposed operators and sponsors); S. 6551-B (providing patients with the right to sue for damages or other relief where their treatment has been improper) and S. 6553-A (broadening penalties for false statements and misrepresentations). We urge that the Governor sign them. In the past we have made recommendations similar to the provisions found in these bills.

While we have some reservations concerning S. 1074-C/A. 993-C, S. 6547-A, S. 6542-B, S. 6541-C, S. 6554-B and S. 6942/A. 8815, we believe that on the whole, they will have a beneficial effect on the quality of nursing home care. At the same time, however, we pledge ourselves to work in the coming session to correct the weaknesses in these bills.

S. 1074-C/A. 993-C establishes a bill of rights for nursing home patients. The current nursing home investigations in New York State have underscored the need for legislation and regulations spelling out the rights of nursing home patients but this bill is only a first step in that direction and lacking many of the elements we feel should be included in such a statute. The enclosed copy of a statement made on our behalf by Dr. Martin Hochbaum at hearings before the Assembly's Subcommittee on Health Care and the enclosed "Bill of Rights for Nursing Home Patients" that we have recommended to the Legislature contain the elements we believe vital to any effective guarantee of patient rights. We would have preferred that the Legislature adopt A. 7874-A, introduced by Assemblywoman Jean Amatucci. This we believe presented nursing home patients with a more comprehensive statement of their rights.

S. 6547-A gives discretionary authority to the State Commissioner of Health to temporarily suspend the operating certificate of hospitals (including nursing homes) where conditions pose a threat to the health or safety of patients. Some of the new powers contained in this legislation, such as the power to prohibit placing new patients in such facilities, are long overdue. But a finding of danger to health or safety should require mandatory suspension of operating licenses and we would hope that a bill to strengthen S. 6547-A would be enacted in the next session of the Legislature.

Honorable Judah Gribetz

- 3 -

July 30, 1975

S. 6542-B, as amended by S. 6942/A. 8815, adds Section 2805-e to the Public Health Law. This would require disclosure in annual reports of the names of operators and owners of nursing homes. However, Section 2805-e contains an internal inconsistency. While this new section requires the reporting of the names of officers and directors of corporations operating or owning facilities, subsection 2805-e (4) would exclude the names of many of these same people from the reporting requirement. Subsection 4 appears to be a mistake.

S. 6541-C deals with the "liability of controlling persons of nursing homes." Unfortunately, the bill's definition of "controlling persons" is imprecise and tends to vitiate the effect of the bill. Future legislation should spell out just which "controlling persons" are affected.

S. 6554-B provides fines of up to \$1,000 per day for violations of rules and regulations pertaining to patient care. The rate of state payment to nursing homes may be decreased by up to 5 per cent of the per diem rate in order to collect these fines. The fact is, however, that in many cases -- perhaps the majority -- a 5 per cent reduction in the daily rate of payment will bring in considerably less than the \$1,000 suggested maximum fine. This bill, then, is likely to be most ineffective, especially regarding long term violations.

Still on the subject of fines, we further note that while S. 6942/A. 8815 contains a provision that gives the Commissioner the discretion to require the posting of security against which assessed penalties may be drawn, that provision is exclusively limited to facilities that have received the lowest of the five possible ratings under the new rating system. We believe that the posting of security should be mandatory, that the \$25,000 maximum should be increased and that there should be minimum security requirements scaled according to the most recent rating.

S. 6942/A. 8815 is an omnibus bill that includes a grievance procedure for residents, empowers the Health Commissioner to establish interim regulations to relate the rate of payment to the quality of care, allows the Public Health Council to approve the establishment of new hospitals for demonstration purposes and sets up receivership procedures. While we are generally pleased with the provisions in this bill, we believe that it contains several that are objectionable. We have already referred to one, a chapter amendment. Two more, however, deserve mention. While we believe in the need for demonstration projects, many hospitals now have a low occupancy rate and there is talk of closing or merging some facilities. We therefore suggest that an attempt be made to implement subdivision 2801-a(3-a) within the framework of existing hospitals. To follow the course suggested in this bill, in a time of difficult economic circumstances, would be a waste of taxpayers' money.

Honorable Judah Gribetz

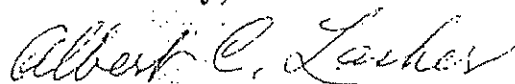
- 4 -

July 30, 1975

Subdivision 2801-d(10)(b) establishes an administrative complaint procedure for patients who believe they have been discriminated against for pursuing their legal rights against low quality care or for testifying against a nursing home. The thirty-day period within which patients must file such complaints is insufficient, particularly when one considers that many nursing home patients are infirm and may need ample opportunity to discuss their course of action with friends, relatives or counsel.

We hope that the Governor will take these comments into consideration not only in acting on the bills currently before him but also in proposing future legislation.

Sincerely,



Albert C. Lasher  
Chairman  
Committee on Poverty and  
Social Welfare

JUL 25 1975



THE CITY OF NEW YORK  
OFFICE OF THE MAYOR  
NEW YORK, N.Y. 10007

July 25, 1975

S#6553-A - by Sens. W.T. Smith, et al

AN ACT To amend the social services law, in  
relation to interest and penalties  
for false statements or misrepresenta-  
tions in connection with medicaid re-  
imbursement

APPROVAL RECOMMENDED

Honorable Hugh L. Carey  
Governor of the State of New York  
Albany, New York

Dear Governor Carey:

The above bill is before you for executive action.

This bill amends the Social Services Law, to make it unlawful for any person, firm or corporation, by means of false statement or representation or other fraudulent device, on behalf of himself or others, to attempt to obtain or to obtain payment from public funds for services or supplies furnished pursuant to the provisions of the Social Services Law. For any violation, the local social services district or the State would have the right in a civil damage suit, to recover three times the amount falsely overstated. Also, should a medicaid provider or supplier of services be required to refund any part of monies received, the amount would include an additional interest penalty at the maximum legal rate.

Current law provides penalties only for the improper receipt of assistance and for improper actions by social services officials and employees. This bill would extend stringent penalties to providers of services, who are guilty of fraudulent practices with the obvious aim of deterring such acts and lowering the costs of the medical assistance program.

Honorable Hugh L. Carey  
July 25, 1975  
Page 2

New York City strongly supports these goals. However, we must point out that enactment would present some problems. By requiring that interest be paid on repayment of any payment received under the medical assistance program, with such repayment not necessarily due to fraud, but possibly clerical or administrative errors, a strict interpretation of this provision could deter providers of services and supplies from participating in the medicaid program, particularly since interest at the maximum legal rate would be charged from the date of initial payment.

Also, the bill does not specify any formula for the disbursement of monies collected from interest payments. These defects however can be remedied by Department regulation.

Accordingly, I urge your approval of this bill.

Very truly yours,

ABRAHAM D. BEAME, Mayor

By *Leonard E. Yoswiler*  
Legislative Representative

COMMUNITY SERVICE SOCIETY



JUL 23 1975

DEPARTMENT OF PUBLIC AFFAIRS

ARTHUR SCHIFF  
DirectorALINE F. LEMAT  
Staff Associate for Health

July 22, 1975

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Honorable Judah Gribetz  
Counsel to the Governor  
Executive Chamber  
State Capitol  
Albany, New York 12224RE: S.6553-A - to amend the social  
service law, in relation to  
interest and penalties for  
false statements or  
misrepresentations

Dear Mr. Gribetz:

The Community Service Society supports this bill to allow the state or local social services district to sue for three times the actual damage in cases of Medicaid fraud. This should provide a financial deterrent to the practice of falsely overstating costs or for improper claims for services rendered.

A copy of our Memorandum (#32) setting forth the opinion of our Committees on Health and Aging is enclosed for your information.

We urge enactment of this bill. Thank you for providing us the opportunity to express our view on this legislation.

Sincerely yours,

Charles B. Dorf  
Chairman  
Committee on Health

CHD:EDM:jf

## New York Association of Homes for the Aging

120 WEST 105TH STREET • NEW YORK, N.Y. 10025 • 212/666-2000

AFFILIATED WITH

A.A.A.

June 9, 1975

JUN 20 1975

Dear Senator:

You and your colleagues are to be highly commended on what you have been doing to develop legislation to remedy abuses and improve the administration of care in nursing homes for the elderly throughout the State.

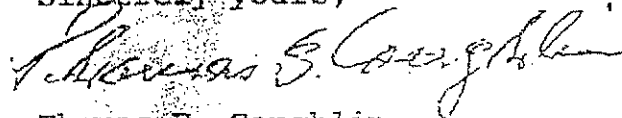
You will be pleased to learn, I believe, that the great majority of the 15 "nursing home" bills proposed by the Moreland Act Commission and the Assembly Subcommittee on Health have the full approval of the New York Association of Homes for the Aging, which represents some 140 non-profit facilities caring for over 20,000 elderly citizens.

The Association's position on each of the 15 bills is given on the attached three-page Summary.

You will note that we support ten of the bills, but find ourselves opposed to five -- the Moreland Act Commission bills A-7816/S-6551 and A-7826/S-6541, and the Health Subcommittee bills A-7873, A-7874, and A-7875. Our detailed reasons for opposing each of these five bills are given in the Addendum to this letter.

We are united, I am sure, in wanting to provide elderly citizens needing help with the best possible care. Your support of the ten bills we favor, and your vote against the five bills we oppose, will contribute significantly toward that end.

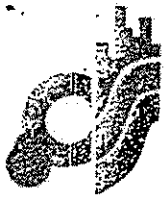
Sincerely yours,



Thomas F. Coughlin  
President

Attachments (2)

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## LEGISLATIVE MEMORANDUM

COMMUNITY SERVICE SOCIETY OF NEW YORK  
105 East 22 Street, New York, N.Y. 10010 • (212) 254-8900

Department of Public Affairs

June 6, 1975

### A BILL TO ALLOW STATE TO SUE FOR MEDICAID FRAUD

Committee on Health  
Committee on Aging

SUPPORT

UPON Recommendation

The Community Service Society supports this bill to empower the state to sue nursing home operators or other providers for treble damages for falsely overstating their costs or for fraud in seeking Medicaid reimbursement. This bill would also provide that refunds to the state shall bear interest from the date the Medicaid payment to the provider was made to the date of the refund.

Heretofore, the Health Department has had difficulty in recovering overcharges and, in effect, has acted as a source of interest-free loans to the nursing homes, some of which were never paid back, as both the Stein and Moreland Act Commissions have revealed.

We believe the bill in its present form amends the wrong section of the Social Services Law. It seems to us that it would be more appropriate to amend Title II, Section 366-b (Penalties for fraudulent practices), which deals specifically with the medical assistance program.

With this recommendation, we urge passage of this bill.

COH 32  
COA 16

1 - 10

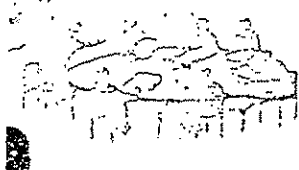
### LEGISLATIVE REFERENCES

S. 6553  
A. 7820

Mr. W.T. Smith, et al.  
Mr. Mevesi

Social Services  
Social Services

Social Services Law, new Section 145-b (False statements - treble damages - actions by the attorney general).



# COMMUNITY COUNCIL OF GREATER NEW YORK

225 Park Avenue South • New York, N.Y. 10003

(212) 777-5393

June 13th, 1975

\$ 6553  
1225

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Chairman of the Board  
MRS. LEONARD M. BERNHEIM  
President

Honorable Manfred Ohrenstein  
New York State Senate  
Albany, New York 12224

Dear Sir:

The Community Council of Greater New York, both in action by its Board of Directors and in testimony before respective Committees of the Legislature, has spoken out in general support of the work of the Moteland Commission.

Therefore, beyond those bills which have already been passed by both the Assembly and the Senate (A.7824/S.6543; A.7821/S.6545; and A.7818/6476A), the following bills have our strong support, and we urge their enactment into law:

- S.6551/A.7816 - allows residents to file class action suits.
- S.6547A/A.7817 - suspension of operating certificates.
- S.6595/A.7819 - legislative ethics, no conflict of interest for public officials.
- S.6553/A.7820 - triple damages for medicaid fraud.
- S.6554/A.7822 - system of penalties and fines.
- S.6544/A.1823 - public disclosure of financial and inspection reports.
- S.6542A/A.7825 - disclosure of identity of persons with financial interests in nursing homes.

In addition, we support these three assembly bills: A.7874-A (Amatucci) which provides for a Patients' Bill of Rights; A.7875 (Dearie) which establishes a state office of residential care ombudsman, and A.7576, which transfers administrative responsibility for the medicaid program (except for determination of eligibility) to the State Department of Health in order to centralize authority for what is, essentially a health program.

We urge that these bills which are only one step in the direction of protecting New Yorkers who reside in nursing homes, be enacted speedily and with the greatest concern for the residents' well-being.

MYRON L. MAYER  
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ADJUNCTION SERVICES  
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DEPT. OF HEALTH  
DEPT. OF RECREATION  
RENT AND HOUSING  
MAINTENANCE  
YOUTH SERVICES AGENCY



JUN 23 1975

## LEGISLATIVE MEMORANDUM

COMMUNITY SERVICE SOCIETY OF NEW YORK  
105 East 22 Street, New York, N.Y. 10010 • (212) 254-8900

Department of Public Affairs

June 6, 1975

## A BILL TO ALLOW STATE TO SUE FOR MEDICAID FRAUD

Committee on Health  
Committee on Aging

REPORT

Final Recommendation

The Community Service Society supports this bill to empower the state to sue nursing home operators or other providers for treble damages for falsely overstating their costs or for fraud in seeking Medicaid reimbursement. This bill would also provide that refunds to the state shall bear interest from the date the Medicaid payment to the provider was made to the date of the refund.

Heretofore, the Health Department has had difficulty in recovering overcharges and, in effect, has acted as a source of interest-free loans to the nursing homes, some of which were never paid back, as both the Stein and Foreland Act Commissions have revealed.

We believe the bill in its present form amends the wrong section of the Social Services Law. It seems to us that it would be more appropriate to amend Title 11, Section 366-b (Penalties for fraudulent practices), which deals specifically with the medical assistance program.

With this recommendation, we urge passage of this bill.

COH 32  
COA 16

1 - 10

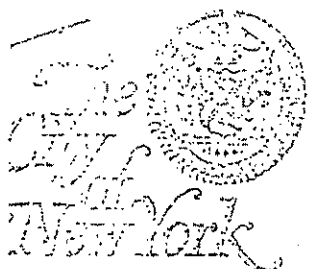
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S. 6553  
A. 7820

Mr. V.T. Smith, et al.  
Mr. Hayes

Social Services  
Social Services

Social Services Law, new Section 145-b (False statements - treble damages - actions by the attorney general).



OFFICE OF THE MAYOR  
OFFICE FOR THE AGING

ALICE M. BROPHY, Director  
250 Broadway  
New York, N. Y. 10007

Original to Kirchhoff  
Info Photo Re: M. G. G. G. G. G.

June 24, 1975

Honorable Hugh L. Carey  
Governor of New York  
Executive Chambers  
Albany, N. Y. 12224

Dear Governor Carey:

The New York City Office for the Aging is concerned that all necessary protections for the aged in nursing homes and health related facilities will die in the Legislature. Our Office strongly supports the strengthening of the powers of the Commissioner of Health, the statutory regulation of conflict of interest of public officials, public disclosure of financial and inspection reports, as well as disclosure of the identity of persons with financial interest in nursing homes. We believe that there should be the suspension of operating service and a system of penalties and fines. We also support the establishment of a residential care ombudsman.

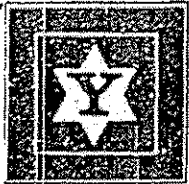
It would be regrettable that the public disclosure of abuses in nursing homes and health related facilities was not followed by appropriate corrective action.

We strongly urge passage of the following:

S. 6547A/A. 7817  
S. 6595/A. 7819  
S. 6553/A. 7820  
S. 6554/A. 7822  
S. 6544/A. 1823  
S. 6542A/A. 7825

Sincerely,

*Alice M. Brophy*  
Alice M. Brophy  
Director



# YM-YWHA OF THE BRONX

1130 GRAND CONCOURSE • BRONX, N. Y. 10456 • (212) 293-1200

BRONX YM & YWHA SENIOR CITIZENS CENTER

JUL 18 1975

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IRVING H. BREGMAN  
IRVING H. BREGMAN  
ISRAEL H. ZINOVY

\*Past Presidents

June 30, 1975

Gov. Hugh Carey  
State Capitol  
Albany, N.Y.

Dear Sir:

The Community Council of Greater New York, both in action by its Board of Directors and in testimony before respective Committees of the Legislature, have spoken out in general support of the work of the Moreland Commission.

Therefore, beyond these bills which have already been passed by both the Assembly and the Senate (A.7824/S.6543; A.7821/S.6543; and A.7818/6476A), the following bills have our strong support, and we urge their enactment into law:

- S.6551/A.7816 - allows residents to file class action suits.
- S.6547A/A.7817 - suspension of operating certificates.
- S.6595/A.7819 - legislative ethics, no conflicts of interest for public officials.
- S.6553/A.7820 - triple damages for medicaid fraud.
- S. 6544/A.1823 - public disclosure of financial and inspection reports.
- S.6554/A.7822 - system of penalties and fines.
- S.6542A/A.7825 - disclosure of identity of persons with financial interests in nursing homes.



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In addition, we support these three assembly bills:

A. 7874-A (Amatucci.) which provides for a Patients Bill of Rights; A.7875 (Dearie) which establishes a state office of residential care ombudsman; and A.7576, which transfers administrative responsibility for the medicaid program ( except for determination of eligibility ) so the State Department of Health in order to centralize authority for what is, essentially a health program,

We urge that those bills which are only one step in the direction of protecting New Yorkers who reside in nursing homes, be enacted speedily and with the greatest concern for the residents well-being.

Sincerely,

*Arthur Pajoune*  
*for association*

BRONX Y M & Y W H A  
SENIOR CITIZENS CENTER

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